

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

KICKFLIP, INC., a Delaware corporation,

Plaintiff,

V.

FACEBOOK, INC., a Delaware corporation,

Defendant.

C.A. No. 12-1369-LPS

JOINT STATUS REPORT

Plaintiff Kickflip, Inc., and Defendant Facebook, Inc., by and through their undersigned counsel, respectfully submit the following joint status report responding to the Court's request at the conclusion of the discovery teleconference held on October 7, 2015.

1. With respect to the supplemental briefing on the issue of the scope of the waiver found by the Court in its order of January 21, 2015, and the applicability of the crime-fraud exception, the parties have agreed on the following schedule:

On or before Tuesday, November 2, 2015 Facebook to file an opening brief no longer than 20 pages.

On or before Tuesday, November 24, 2015 Kickflip to file a responsive brief no longer than 20 pages.

On or before Tuesday, December 1, 2015 Facebook to file a reply brief no longer than 10 pages.

Kickflip maintains there is no evidence of litigation counsel aiding in any fraud on the Court and reserves all rights to seek appropriate relief.

2. With respect to the searching and logging of litigation counsel's documents related to Kickflip's efforts to ascertain the true creation date of the December Agreement and the failure of Eric Benisek's hard drive, the parties have agreed on certain date restrictions and search terms to reduce Kickflip's burden.

For documents related to Kickflip's efforts to ascertain the true date of the December Agreement, the parties agree that Kickflip's litigation counsel will search for documents in their possession created between January 21, 2015 and April 17, 2015 using the following search terms:

- ("Dec 2009" OR "December 2009" OR "Dec 15, 2009" OR "Dec 2009" OR "December 2009" OR "Dec 15 2009" OR "December 15, 2009" OR "2009-12-15" OR "12/9" OR "12/15/2009" OR "12/15/09" OR "December 15" OR December) AND agreement
- "asset share exchange" AND agreement
- "assets in exchange for shares" AND agreement
- (Kickflip OR Gambit OR Hunter OR Smoak OR Benisek OR Facebook) AND (assignment OR transfer OR "asset sale" OR "asset purchase" OR agreement)
- ("Nov 2009" OR "November 2009" OR "Nov 9, 2009" OR "November 9, 2009" OR "2009-11-09" OR "11/9" OR "11/9/2009" OR "11/9/09" OR "November 9" OR November) AND agreement
- agreement AND (asset! OR share!)
- backdat! OR back-dat! OR "back dat!"

For documents relating to the alleged failure of Eric Benisek's hard drive, the parties agree that Kickflip's litigation counsel will search for documents in their possession created between January 1, 2012 and April 17, 2015 using the following search terms:

- (Eric OR Benisek) AND ((harddrive OR drive OR computer OR laptop) OR (missing OR lost OR destroyed OR deleted) AND (file! OR document!))

The parties agree to meet and confer in good faith on potential further limitations if, after the above searches have been run, the results are so voluminous as to make review and logging of such documents excessively burdensome.

The parties agree that Kickflip will produce a privilege log of all responsive documents by Wednesday, November 3, 2015.

3. The parties agree that, in accordance with the Court's order on October 7, Kickflip will submit redacted and unredacted copies of previously identified documents to a Magistrate Judge to be designated by the Court, to review whether the material can be properly withheld as privileged. To provide background information needed to assist the Magistrate Judge in making this determination, the parties agree that each of them may submit a brief of no more than five pages by Tuesday, October 27, 2015. The parties agree that Kickflip shall submit the redacted and unredacted documents to the Magistrate Judge by Wednesday, October 28, 2015.

4. The parties agree that all deadlines for any depositions or supplemental briefing identified in the Joint Scheduling Order (D.I. 117) are stayed pending a ruling by this Court (or agreement between the parties) on the discovery issues raised during the October 7 discovery teleconference. The parties agree to confer again, and to submit a joint status report within five days of a ruling by the Court resolving those issues.

Respectfully submitted,

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Dated: October 13, 2015